

Atty Alabart, Javier A. (for Petitioner Alfredo Banda Arriaga, father)
 Atty Fanucchi, Edward L. (for Respondent Maria Luisa Sanchez, purported spouse)
 Atty Kruthers, Heather H. (for Public Administrator, Administrator of the Estate)

Alfredo Banda Arriaga's Petition for Preliminary Distribution of Decedent Estate Assets [Prob. Code 11600]

DOD: 5/14/2004	ALFREDO BANDA ARRIAGA , father, is Petitioner.		NEEDS/PROBLEMS/COMMENTS:
	<p>Petitioner requests an order for a preliminary distribution of the estate assets, and in support thereof, respectfully represents:</p> <ul style="list-style-type: none"> Petitioner is the sole-surviving parent of the Decedent, and the sole-surviving devisee of the Will signed by the Decedent on 10/16/1997; The PUBLIC ADMINISTRATOR was appointed as Special Administrator of the Decedent's estate on 8/30/2005, and the order was signed on 9/23/2005; <i>Letters of Special Administration</i> with Will Annexed were issued to the Public Administrator on 9/27/2005; The <i>Inventory and Appraisal</i> was filed on 9/15/2005, and shows that the assets of the estate at that time were valued at \$203,823.43; On 3/27/2006, the Public Administrator was appointed Administrator of Decedent's estate; the order granted the Public Administrator's <i>Petition for Probate of Will and for Letters of Administration with Will Annexed</i>, and the 10/16/1997 Will signed by the Decedent was admitted to probate on 3/28/2006; <i>Letters of Administration</i> were issued on 3/29/2006, authorizing administration under the Independent Administration of Estates Act, and are still in full force and effect; On 2/29/2012, the <i>Amended First and Final Account and Report of Administrator and Petition for Allowance of Ordinary and Extraordinary Commissions and Fees</i> was filed by the Public Administrator; Notice to creditors was published in the manner prescribed by law, with the first publication being made on 8/8/2005; filed with the Court on 8/18/2005, was an affidavit showing due publication of the notice to creditors in the form and manner required by law; The statutory period for filing creditor's claims has expired; 		
Cont. from 010313, 040913, 071213			
Aff.Sub.W			
✓ Verified			
Inventory			
PTC			
Not.Cred.			
✓ Notice of Hrg			
✓ Aff.Mail	W /		
Aff.Pub.			
Sp.Ntc.			
✓ Pers.Serv.	W /		
Conf. Screen			
Letters			
Duties/S			
Objection			
Video Rct			
CI Report			
9202			
Order	X		
Aff. Post			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			

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Arriaga's Petition for Preliminary Distribution filed 10/2/2013, continued:

- On 6/25/2012, the *Amended First and Final Account and Report of Administrator and Petition for Allowance of Ordinary and Extraordinary Commissions and Fees* filed by the Public Administrator was granted allowing and awarding the payment of ordinary and extraordinary commissions and fees filed by the Public Administrator in the amount of **\$19,643.43**;
- According to the *Amended First and Final Account and Report of Administrator and Petition for Allowance of Ordinary and Extraordinary Commissions and Fees* filed by the Public Administrator, no federal estate tax return is required to be filed, and no federal estate tax is due or payable, and the property on hand belonging to the Decedent's estate was **\$109,346.53**, all of which is in cash;
- The names and relationship to the Decedent [*ages and addresses omitted*] of each devisee are as follows:
 - **ALFREDO BANDA ARRIAGA**, Decedent's father (Petitioner);
 - **REMEDIOS NIETO**, Decedent's mother and Petitioner's wife, and the only other named devisee in the Will admitted to probate, so long as she survived the Decedent by 30 days; Remedios Nieto died on 1/26/2011.
- The status of each claim against the estate filed or presented, including the name of the claimant, the amount claimed, and the disposition, is as follows:
 - **MARIA LUISA SANCHEZ**: claims a right to the entire estate; she has received a preliminary distribution of **\$103,000.00**;
 - **ALFREDO BANDA ARRIAGA**: claims a right to the entire estate; he has received no estate assets and currently petitions the Court for preliminary distribution, and will challenge the preliminary distribution to **MARIA LUISA SANCHEZ** at a later date.
- The property can be distributed to the Petitioner in accordance with Decedent's Will without loss to creditors or injury to the estate or any interested person for the following reasons:
 - There are no creditors that have made claim and the period for creditors to make a claim has expired;
 - Maria Luisa Sanchez is the only person claiming to be an interested person and having a right to the Decedent's estate other than the Petitioner;
 - The Will admitted to probate was not validly contested, thus the Decedent died testate naming his father and mother as devisees, so long as they survived him by 30 days, which they each did;
 - Maria Luisa Sanchez has received a preliminary distribution of **\$103,000.00**, which Petitioner will argue should be voided at a later date;
 - Nothing within this petition waives the Petitioner's right to challenge the validity of the preliminary distribution to Maria Luisa Sanchez; Petitioner specifically reserves the right to challenge the validity of the Court's order for preliminary distribution to Maria Luisa Sanchez at a later time; this challenge will not affect the preliminary distribution requested in this petition;
 - Therefore, all currently remaining assets should be delivered to the Petitioner and the Estate of Remedios Nieto in equal shares as a preliminary distribution pursuant to the Will admitted to probate by this Court, minus only the prorated amount of allowed ordinary and extraordinary commissions and fees applicable to the **\$109,346.53** approximate amount of assets currently remaining in the estate;

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Arriaga's Petition for Preliminary Distribution filed 10/2/2013, continued:

- Petitioner should not be required to pay commission and fees that should have been deducted, but were not, from the preliminary distribution already made to Maria Luisa Sanchez;
 - Petitioner believes that the amount of prorated ordinary and extraordinary commissions and fees applicable to the remaining **\$109,346.53** of assets is **\$9,821.72** or less;
 - The value of the estate remaining in the hands of the Public Administrator after the preliminary distribution will be **\$0.00** pending resolution of the validity of the **\$103,000.00** preliminary distribution previously made to Maria Luisa Sanchez;
- The estate is not in a condition to be closed because the Petitioner will be filing a petition at a later date seeking an order voiding the prior preliminary distribution to Maria Luisa Sanchez because Petitioner believes that no formal written petition for preliminary distribution was ever filed with the Court as required, and that proper prior notice of the preliminary distribution to Maria Luisa Sanchez was never given as required by law, thereby depriving the Court of jurisdiction to make an order of preliminary distribution to Maria Luisa Sanchez; therefore, the Court will be required to decide that issue at a later date.

Petitioner Arriaga prays for an Order that the remaining estate assets in the approximate amount of **\$109,346.53** be ordered distributed to the Petitioner and the Estate of Remedios Nieto in equal shares, minus only the prorated amount of allowed ordinary and extraordinary commission and fees applicable to the **\$109,346.53** in the approximate amount of **\$8,821.72** or less *[Note: the sum of \$9,821.72 was stated earlier in the Petition.]*

Respondent/Objector Maria Luisa Sanchez's Opposition to Alfredo Banda Arriaga's Petition for Preliminary Distribution of Decedent Estate Assets filed by Attorney Fanucchi on 10/25/2013 states:

- **Ms. Sanchez in an interest person who may properly oppose** Mr. Arriaga's Petition for Preliminary Distribution *[case law citations omitted]*; as the Court knows from the multiple filings and hearings conducted in this case over the past several years, Ms. Sanchez claims an entitlement to the estate as the Decedent's widow and pursuant to a decree of the Mexican court directing distribution to her under Mexican law; Mr. Arriaga admits that Ms. Sanchez claims a direct pecuniary interest in the estate *[references to petition omitted]*; thus, Ms. Sanchez is a proper person to oppose Mr. Arriaga's Petition for Preliminary Distribution;
- **The Court should order distribution of the remaining assets of the estate to Ms. Sanchez** since Mr. Arriaga has not shown, and cannot show, that he is entitled to the distribution he seeks because the Court has already determined that the Will initially admitted to probate does not control distribution of the estate, but that distribution of the estate is controlled by Mexican law and the decree of the Mexican court identifying Ms. Sanchez as the sole heir and beneficiary entitled to the estate;
- The Court ruled 6 years ago that distribution of the estate is controlled by the decree of the Mexican court finding that Ms. Sanchez is the sole heir to the Decedent's estate *[citations to previously filed documents omitted; copies of documents attached as Exhibits A, B, C, and D]*; this ruling is absolutely correct because the disposition of a Decedent's personal property (including cash) is controlled by the law of the Decedent's last domicile *[citation omitted]*; since the last domicile of the Decedent in this case was Mexico, the disposition of his personal property situated in California is controlled by Mexican law;

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Respondent/Objector Maria Luisa Sanchez's Opposition filed 10/25/2013, continued:

- Mr. Arriaga's petition for preliminary distribution does not address either of the triable issues that exist per the Court's 8/21/2013 ruling: (1) that part of the 11/5/2007 order making a preliminary distribution to Maria Sanchez exceeded the Court's jurisdiction since no separate petition appeared to have been filed by Ms. Sanchez; and (2) whether the 11/5/2007 order can be set aside on the ground of extrinsic mistake, which requires Mr. Arriaga to prove, among other things, extrinsic fraud on the part of the **PUBLIC ADMINISTRATOR**; Mr. Arriaga's petition states he intends to challenge the preliminary distribution to Ms. Sanchez "**at a later date.**" [emphasis in original]; therefore, the validity and efficacy of the Court's 11/5/2007 order is not challenged by Mr. Arriaga in this proceeding;
- There is no requirement that a distribution be made solely to the person who petitions for the distribution, which makes sense because a personal representative, a person who is not necessarily entitled to any distribution but who will physically accomplish the distribution, may petition for a distribution; thus, if the requirements for distribution to Ms. Sanchez are satisfied, the Court is obligated to order distribution of the estate to Ms. Sanchez even though the instant petition was filed by Mr. Arriaga;
- Since the Mexican decree is controlling and provides that Ms. Sanchez is the sole heir to the estate, Mr. Arriaga is not entitled to any part of the estate, and Ms. Sanchez is entitled to the remaining part of the estate that has not yet been distributed to her; as such, Mr. Arriaga's petition for preliminary distribution should be denied to the extent that it seeks to have the balance of the estate distributed to Ms. Arriaga, **but it should be granted with an order that the remaining balance of the estate be immediately distributed to Ms. Sanchez in accordance with the decree of the Mexican court** [emphasis in original];
- **Alternatively, Mr. Arriaga's petition for preliminary distribution should be denied because his right to any portion of the estate is a contested matter** [emphasis in original]; Mr. Arriaga's alleged entitlement to any part of the estate is a contested issue in this case; therefore, Mr. Arriaga's petition for preliminary distribution is improper and should be denied;
- **Alternatively, Mr. Arriaga's petition for preliminary distribution should be denied because its outcome is dependent upon the resolution of his pending petition to set aside the Court's prior orders regarding Ms. Sanchez's status and the preliminary distribution made to her;** the issues to be tried should be determined first because they will necessarily decide the question of whether Mr. Arriaga is entitled to any share of the estate;
- **Alternatively, if Mr. Arriaga's petition for preliminary distribution is granted, Mr. Arriaga should be required to post a bond in the amount of the distribution in order to protect the interests of Ms. Sanchez;** if Mr. Arriaga's petition for preliminary distribution is granted, Ms. Sanchez will certainly need to resort to a bond written by an admitted California surety to recover the amount of the estate that she is entitled to distribution of after Mr. Arriaga's petition to set aside the Court's prior orders is denied.

Respondent Sanchez asserts that the Court should order distribution of the remaining estate assets to Ms. Sanchez; alternatively, Mr. Arriaga's petition for preliminary distribution should be denied and a trial date should be set for his petition to set aside the prior orders.

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Reply to Respondent/Objector Maria Luisa Sanchez's Opposition to Alfredo Banda Arriaga's Petition for Preliminary Distribution of Decedent Estate Assets filed by Attorney Alabart on 11/1/2013 states:

- Ms. Sanchez claims a right to all of the assets of the Estate of Juventino Banda Nieto;
- As will be shown below, Ms. Sanchez has absolutely no right to estate assets that are the subject of Mr. Arriaga's Petition for Preliminary Distribution;
- While Ms. Sanchez claims Mr. Arriaga admits Ms. Sanchez has a pecuniary interest in the remaining estate assets, the truth is that Ms. Arriaga admits **only** that Ms. Sanchez **claims** *[emphasis in original]* she has an interest in the estate assets;
- Ms. Sanchez actually has **no interest whatsoever** *[emphasis in original]* in the assets of the Estate of Juventino Banda Nieto;
- Ms. Sanchez' claim of right to the decedent estate assets stems from her assertions that: (1) she was the wife of the Decedent; and (2) the Mexican court's order of 5/31/2005 governs all distributions concerning the estate assets of the Decedent, Juventino Banda Nieto; both assertions are wrong!
- Ms. Sanchez has never established that she is the wife of the Decedent; none of the submitted Mexican court orders refer to Ms. Sanchez as the wife or widow of the Decedent; on the contrary, the 5/31/2005 Mexican Court Order, an order regarding intestate succession, specifically refers to Ms. Sanchez as a concubine *[citations and cross-reference to previously filed documents omitted]*; in fact, Ms. Sanchez has **admitted** *[emphasis in original]* that she was not legally married pursuant to the laws of Mexico to the Decedent *[citations and cross-reference to previously filed documents omitted; copies attached as Exhibits 1 and 2]*; any representation by Ms. Sanchez that she is the legal wife or widow of the Decedent is a blatant misrepresentation of the facts;
- Additionally, while Mr. Arriaga does not agree with Ms. Sanchez' assertion that the Mexican court orders control the disposition of the decedent estate assets, the Mexican court has already determined Mr. Arriaga and Remedios Nieto are heirs and entitled to half of the Decedent's estate *[citations and cross-reference to previously filed documents omitted; copies attached as Exhibits 1 and 2]*; as such, no credible argument has been presented to establish that Ms. Sanchez has any right to the estate assets sought to be distributed;
- Furthermore, Ms. Sanchez' opposition to Mr. Arriaga's petition was served late; pursuant to Code of Civil Procedure § 1005, opposition papers are to be filed and served 9 court days prior to the hearing; the hearing for Mr. Arriaga's Petition for Preliminary Distribution is set for 11/5/2013; Ms. Sanchez opposition paper was therefore due on 10/23/2013; Ms. Sanchez did not serve her opposition until 10/24/2013; due to the tardy service of Ms. Sanchez' opposition, Mr. Arriaga's counsel received the opposition after the time for a timely reply pursuant to § 1005 had already passed *[Please see Declaration of Javier Alabart in Support of Reply to Respondent/Objector Maria Luisa Sanchez's Opposition to Alfredo Banda Arriaga's Petition for Preliminary Distribution of Decedent Estate Assets filed 11/1/2013]*;
- **The Opposition to the Petition for Preliminary Distribution is not verified and should not be considered:** Probate Code § 1021 requires that the opposition filed by Maria Luisa Sanchez to the Petition for Preliminary Distribution must be verified; although Mr. Fanucchi, the attorney for Maria Luisa Sanchez, signed the opposition he did not provide the required verification signed by him; therefore, the opposition filed by Ms. Sanchez should not be considered by the Court.

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Reply by Petitioner Arriaga to Respondent Sanchez's Opposition filed 11/1/2013, continued:

- **Ms. Sanchez is not entitled to any portion of the estate assets that are the subject of the petition for preliminary distribution:** Ms. Sanchez claims entitlement to the decedent estate assets that are the subject of the Petition for Preliminary Distribution by virtue of the 5/31/2005 Mexican Court Order; this is the only argument Ms. Sanchez makes to support her assertion of right to the Decedent's estate; there is no scenario where Ms. Sanchez is entitled to the decedent's estate assets that are the subject of Mr. Arriaga's Petition for Preliminary Distribution; because Ms. Sanchez has no interest or right to these assets, this Court should order preliminary distribution to Mr. Arriaga and the Estate of Remedios Nieto;
 1. **Pursuant to the Mexican Court, Mr. and Mrs. Arriaga are entitled to the estate assets:** On 5/20/2010, the Mexican court held that Mr. Arriaga and Remedios Nieto are heirs to their son's estate *[citations and cross-reference to previously filed documents omitted; copies attached as Exhibits 1 and 2]*; this order supersedes, voids and nullifies the 5/31/2005 Mexican Court Order upon which Ms. Sanchez relies; the 5/20/2010 Mexican Court Order specifically ordered that Mr. Arriaga and Remedios Nieto were entitled to one-half of the Decedent's estate, thus not only are Mr. Arriaga and Remedios Nieto heirs pursuant to the orders of the Mexican court, they are entitled to their portion of the estate, which amounts to one-half of the estate; because Ms. Sanchez has already received half of the estate assets by a preliminary distribution, Mr. Arriaga and the Estate of Remedios Nieto are entitled to the assets being sought in the Petition for Preliminary Distribution; Ms. Sanchez argues that the 5/31/2005 Mexican Court Order controls distribution of the entire assets and wants the Court to believe that the 5/31/2005 Mexican Court Order exists in a vacuum; Ms. Sanchez completely ignores that fact the Mr. Arriaga presented to this Court the entire Mexican court's file as it existed on 2/1/2011 *[citation to previously filed document omitted]*; the simple fact is that the Mexican court has decreed that Mr. Arriaga and Remedios Nieto are heirs and entitled to one-half of the Decedent's estate; Mr. Arriaga contends that Ms. Sanchez is not the lawful wife of Juventino Banda Nieto; however, even **if** Ms. Sanchez was determined to be the lawful wife of the Decedent pursuant to Mexican law, she would still not be entitled to more than one-half of the Decedent's estate under the laws of Mexico; because Ms. Sanchez has received the maximum that she would be entitled to under Mexican law, based on the orders of the Mexican court she has no interest in the estate assets that are the subject of the Petition for Preliminary Distribution.
 2. **Ms. Sanchez is not a beneficiary under the Will admitted to probate and has no interest in the assets that are the subject of the Petition for Preliminary Distribution unless she pleads and proves she is a putative spouse:** The 1997 California will signed by Decedent bequeaths the entire estate of the Decedent to his parents; this Court has already determined that the 1997 California will admitted to probate was never contested; the will was admitted to probate on 3/28/2006, and the time to contest the will has expired; as such, the Will controls distribution, unless Ms. Sanchez is found by this Court to be the Decedent's putative spouse/pretermitted heir; Ms. Sanchez cannot claim any interest in the estate assets based on the will admitted to probate;
 3. **Even if Ms. Sanchez were determined to be a putative spouse/pretermitted heir, she has no interest in the estate assets that are the subject of the petition for preliminary distribution:** Mr. Arriaga contests any suggestions that Ms. Sanchez is a putative spouse and therefore a pretermitted heir; however, even if that finding was made, the most she would be entitled to under California law would be one-half of the Decedent's estate; Ms. Sanchez has already received one-half of the Decedent's estate assets, and she cannot rightfully claim any interest in the estate assets that are the subject of the Petition for Preliminary Distribution; **~Please see additional page~**

Reply by Petitioner Arriaga to Respondent Sanchez's Opposition filed 11/1/2013, continued:

- **Ms. Sanchez is not an interested person in the estate assets and does not have standing to oppose Mr. Arriaga's request:** There is no evidence before this Court to support Ms. Sanchez' claim of interest in the assets that are the subject of the Petition for Preliminary Distribution; because Ms. Sanchez has no right to the estate assets that are the subject of the Petition for Preliminary Distribution, she does not have standing to object or oppose Mr. Arriaga's the Petition for Preliminary Distribution;
- **The pending litigation on remaining contested issues does not prevent the Court from granting the Petition for Preliminary Distribution:** Pendency of an heirship proceeding is not an obstacle to distribution *[citation omitted]*; the only issue left possibly affecting the administration proceedings of the Decedent's estate is whether Ms. Sanchez must return the preliminary distribution she received; this Court has determined that there are triable issues in this matter: (1) If the 11/5/2007 order making preliminary distribution to Ms. Sanchez exceeded the Court's jurisdiction since no separate petition for preliminary distribution was filed by Ms. Sanchez; and (2) whether the 11/5/2007 order can be set aside on grounds of extrinsic mistake; neither of these issues has any bearing on the distribution of the remaining assets to Mr. Arriaga and the Estate of Remedios Nieto; these issues only have a bearing on whether Ms. Sanchez will have to return the preliminary distribution she already received; because determination of the remaining issues does not affect the preliminary distribution sought by Mr. Arriaga, the Petition for Preliminary Distribution should be granted.
- **No bond should be required because Ms. Sanchez does not have a right to the estate assets that are the subject of the Petition for Preliminary Distribution:** Ms. Sanchez has requested, alternatively, that if the Court orders distribution to Mr. Arriaga, he should be required to post bond; Ms. Sanchez has no interest in decedent estate assets sought to be distributed; as such, there is no chance of injury or harm to any remaining heir; because of this, the Court should grant the Petition for Preliminary Distribution and not require Mr. Arriaga to post a bond.

Petitioner Arriaga asserts the Petition for Preliminary Distribution should be granted and the distribution should be ordered by the Court as sought; Ms. Sanchez has been unable to establish that she has any interest to the decedent estate assets that are the subject of the Petition for Preliminary Distribution; Ms. Sanchez has no interest in these estate assets either under the will, pursuant to authority of the Mexican court, or as a pretermitted heir; she has no standing to object and/or oppose Mr. Arriaga's Petition for Preliminary Distribution; furthermore, Mr. Arriaga has established that he and the Estate of Remedios Nieto are entitled to these Decedent's estate assets.

Declaration of Javier Alabart in Support of Reply to Respondent/Objector Maria Luisa Sanchez's Opposition to Alfredo Banda Arriaga's Petition for Preliminary Distribution of Decedent Estate Assets filed 11/1/2013 states: His office received Respondent/Objector Maria Luisa Sanchez' Opposition to Alfredo Banda Arriaga's Petition for Preliminary Distribution of Decedent Estate Assets on 10/29/2013.

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NEEDS/PROBLEMS/COMMENTS, continued:

1. Alfredo Banda Arriaga's *Petition for Preliminary Distribution of Decedent Estate Assets* requests distribution to Petitioner and the *Estate of Remedios Nieto* in equal shares, without establishing that a personal representative of the *Estate of Remedios Nieto* has been appointed to receive assets. Need proof of Letters Testamentary or Letters of Administration issued in the *Estate of Remedios Nieto* prior to authorization of any distribution to said estate from the *Estate of Juventino Banda Nieto*. Alternatively, Petitioner may choose to amend the instant *Petition for Preliminary Distribution* to request preliminary distribution of only the share of the estate assets to which he asserts entitlement.
2. *Order After Hearing Settling Amended First and Final Account, etc.*, approved on 6/25/2012 finds that after payment of commissions, fees and costs in the amount of **\$19,643.43**, there will be **\$89,703.10** to distribute upon further Court order regarding entitlement to final distribution. Petitioner requests assets of **\$109,346.53** be ordered distributed to the Petitioner and the *Estate of Remedios Nieto* in equal shares, minus only the prorated amount of allowed ordinary and extraordinary commission and fees applicable to the **\$109,346.53** in the approximate amount of **\$8,821.72** or less (*Petition* states in Paragraph 15(f) a contradictory sum of **\$9,821.72** or less as the approximate amount of commissions and fees.) Need authority in support of Petitioner's request for preliminary distribution that would necessitate the *Order After Hearing Settling Amended First and Final Account, etc.*, approved on 6/25/2012 be amended to order a disparate distribution as requested in the *Petition for Preliminary Distribution of Decedent Estate Assets*. Further, Court would need clarification of the specific amounts that form the basis of Petitioner's calculation and requested distribution, other than the assertion that commissions and fees were not deducted prior to making the **\$103,000.00** preliminary distribution to Maria Luisa Sanchez.

Note: Petitioner's proposed preliminary distribution appears to exceed the allowable amount of distribution pursuant to Probate Code § 11623(a)(2) providing that the aggregate of all property preliminarily distributed shall not exceed **50%** of the net value of the estate (9/13/2006 *Inventory and Appraisal* valued the estate at **\$203,823.43**; roughly **50%** of that sum is **\$101,911.72**); additionally, the Court must find that no loss or injury will be suffered by the estate, creditors, or any interested persons per Probate Code § 10520 if the Court allows the requested preliminary distribution.

Notes for Background:

- Decedent's 1997 California Will admitted to probate for administration by the **PUBLIC ADMINISTRATOR** on 3/27/2006 identified Decedent's parents, **ALFREDO BANDA ARRIAGA and REMEDIOS NIETO RODRIGUEZ**, as the only beneficiaries of Decedent's estate;
- Decedent's parents were initially to be distributed by *Order Settling First and Final Account and Report of Administrator and Allowing Ordinary Commissions and Fees and for Distribution*, which was signed and filed on 3/12/2007, the assets from the Decedent's estate in the amount of **\$189,958.21** at **50%** to each;
- **MARIA LUISA SANCHEZ**, purported spouse, asserts that she is the rightful heir of the Decedent entitled to distribution of the entire estate of Decedent;
- **Minute Order dated 11/5/2007** from the hearing on the *Petition for Reconsideration of First and Final Account* filed by Maria Luisa Sanchez states Decedent's estate should be distributed to Sanchez, as the Court stated that it previously granted Sanchez' *Petition for Reconsideration of First and Final Account* on 10/12/2007, and that the *Order on First and Final Account* filed 3/12/2007 distributing the estate to Decedent's parents is revoked. Court approved a preliminary distribution to Sanchez in the amount of **\$103,000.00** on 11/5/2007; *Receipt of Distribution* signed by Attorney Fanucchi was filed with the Court on 12/12/2007.

2 Betty Schweickert (Estate)

Case No. 09CEPR00995

Atty Jaech, Jeffrey A. (for Craig C. Root – Executor/Petitioner)

(1) First and Final Account and Report of Personal Representative and Petition for Its Settlement; (2) for Allowance of Attorneys' Fees for Ordinary Services; and (3) for Final Distribution [Prob. C. 11640]

DOD: 11/09/09		CRAIG ROOT , Executor, is petitioner.	NEEDS/PROBLEMS/COMMENTS:
		Account period: 11/09/09 – 08/31/13	
Cont. from		Accounting - \$333,940.79	
<input type="checkbox"/>	Aff.Sub.Wit.	Beginning POH - \$359,687.51	
<input checked="" type="checkbox"/>	Verified	Ending POH - \$307,452.06	
<input checked="" type="checkbox"/>	Inventory	(\$193,452.06 is cash)	
<input checked="" type="checkbox"/>	PTC	Executor - waived	
<input checked="" type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg	Attorney - \$8,217.88 (less than statutory)	
<input checked="" type="checkbox"/>	Aff.Mail	w/o	
<input type="checkbox"/>	Aff.Pub.	Costs - \$460.50 (filing fees, certified letters)	
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen	Petitioner states that the real property on hand for distribution has an estimated market value greater than the Inventory & Appraisal value (\$125,000 as opposed to \$110,000) and has calculated the distribution using the greater value pursuant to the agreement by the beneficiaries. Using this estimated market value for the real property results in the ending POH being \$322,452.06 of which \$193,452.06 is cash. This ending POH was used to determine the value of the distribution to each heir. Reappraisal for Distribution filed 10/02/13.	
<input type="checkbox"/>	Letters	01/19/10	
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input checked="" type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input checked="" type="checkbox"/>	FTB Notice	<p>Distribution, pursuant to Decedent's Will and agreement among the beneficiaries, is to:</p> <p>Ruth Root - \$90,641.58 cash, plus real property valued at \$125,000.00, a vehicle valued at \$2,000.00 and miscellaneous household items valued at \$2,000.00</p> <p>William Christopher Root - \$47,066.05 James Allen - \$15,688.69 Chantel Root - \$15,688.68 Craig C. Root - \$15,688.68</p>	

Reviewed by: JF

Reviewed on: 10/31/13

Updates:

Recommendation: SUBMITTED

File 2 – Schweickert

Motion for Reconsideration

**NEEDS/PROBLEMS/
COMMENTS:**

Reviewed by: skc

Reviewed on: 11-1-13

Updates:

Recommendation:

File 3 – Staicer

4 Mildred Haney (CONS/PE)

Case No. 12CEPR00534

Atty Johnson, Summer A (Petitioner/Attorney for former Conservator of the Person)

Atty Kruthers, Heather (for Public Guardian/Conservator of the Person)

Atty Motsenbocker, Gary L (for Bruce Bickel/Conservator of the Estate)

Petition for Approval of Payment of Conservator's Attorney's Fees and Reimbursement of Costs Advanced [Prob. C. 2642, 2640.1]

			<p>SUMMER JOHNSON, attorney for former conservator of the person Anita Leal-Idrogo, is petitioner.</p> <p>BRUCE BICKEL is conservator of the estate.</p> <p>PUBLIC GUARDIAN is successor conservator of the person.</p> <p>Petitioner requests fees in connection with the representation the former conservator of the person, Anita Leal-Idrogo.</p> <p>Attorney fees - \$12,268.75 (attorney rate at \$200-325 per hour for issues regarding the conservatee's residence, assisting conservator of the estate in locating and marshaling assets, ex parte petitions, preparation of petitions for fees and preparation of former conservator's petition to resign.)</p> <p>Costs - \$1,559.00 (filing fee and court call appearance)</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need proof of service of the Notice of Hearing on:</p> <p>a. Public Guardian (successor conservator of the person)</p> <p>b. Heather Kruthers (attorney for successor conservator)</p>
Cont. from				
	Aff.Sub.Wit.			
✓	Verified			
	Inventory			
	PTC			
	Not.Cred.			
✓	Notice of Hrg			
✓	Aff.Mail	W/		
	Aff.Pub.			
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
	Letters			
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✓	Order			
	Aff. Posting			
	Status Rpt			
	UCCJEA			
	Citation			
	FTB Notice			
			<p>Reviewed by: KT</p> <p>Reviewed on: 11/1/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 4 – Haney</p>	

5A Lawrence Eugene Hawkins (Estate)**Case No. 12CEPR00970****Atty Williams, Steven R. of Visalia (for Paul Gestic – Executor/Petitioner)****(1) Petition for Settlement of First and Final Account and (2) Final Distribution**

DOD: 10/15/11		PAUL GESTIC , Executor, is Petitioner.	NEEDS/PROBLEMS/COMMENTS: Continued from 7/30/13. Minute order states Mr. Williams appearing by court call. Mr. Williams informs the court that notice was given to the Franchise Tax Board last week. Mr. Williams requests a continuance to allow the FTB an opportunity to do what they need to do. As of 10/31/13 no additional documents have been filed. 1. The petition proposes to distribute the assets of the estate to the decedent's surviving spouse, Jun Hawkins and states that she is a pretermitted heir of the decedent; however, decedent's will devised the residue of the estate to son, Larry Allen Hawkins (gift of principal residence to Arlene Hawkins is void due to divorce). No assignments or disclaimers of interest have been filed in this matter. Need authority and/or more information regarding the proposed distribution to Jun Hawkins.
		Account period: 12/06/12 – 05/31/13	
Cont. from 073013		Accounting - \$237,500.00	
<input type="checkbox"/>	Aff.Sub.Wit.	Beginning POH- \$237,500.00	
<input checked="" type="checkbox"/>	Verified	Ending POH - \$237,500.00 (no cash)	
<input checked="" type="checkbox"/>	Inventory	Executor - waives	
<input checked="" type="checkbox"/>	PTC	Attorney - \$7,750.00	
<input checked="" type="checkbox"/>	Not.Cred.	(statutory, waived subject to the approval of the transfer of the estate to the decedent's surviving spouse, Jun Hawkins)	
<input checked="" type="checkbox"/>	Notice of Hrg	Distribution, pursuant to ???, to:	
<input checked="" type="checkbox"/>	Aff.Mail	Jun Hawkins - \$237,500.00	
	Aff.Pub.	(real property and household furnishings)	
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
	Letters	12/06/12	
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
<input checked="" type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
<input checked="" type="checkbox"/>	FTB Notice		
			Reviewed by: JF for hearing on 7/30/13 Reviewed on: 10/31/13 (KT) Updates: Recommendation: File 5A – Hawkins

5A

5B Lawrence Eugene Hawkins (Estate)

Atty Williams, Steven R. (for Executor Paul Gestic)

Atty Winter, Gary (for Objector Arlene Hawkins)

Case No. 12CEPR00970

Petition to Determine Person Entitled to Distribution of Estate by Surviving Spouse

DOD: 10/15/2011		JUN HAWKINS , surviving spouse, is petitioner.	NEEDS/PROBLEMS/COMMENTS:
		Petitioner states the decedent left an estate consisting of real property. The property was acquired by the decedent prior to the marriage to the petitioner and paid for in part as the result of the joint efforts of the marriage. Petitioner alleges the property is partially separate property and partially community property.	Continued from 10/2/13. Minute order states Ms. Wittig is appearing via court call. Parties agree that Mr. Winter does not need to prepare an opposition at this time. As of 10/31/13 no additional documents have been filed.
Cont. from 100213			
	Aff.Sub.Wit.	The property was appraised at \$230,000.00. The property has a current unpaid principal balance of \$275,439.07 with a past due balance of \$13,138.49.	1. Attorney Steven R. William is the attorney for the Executor Paul Gestic. It appears he is also representing the beneficiary/surviving spouse, Jun Hawkins. This appears to be a conflict of interest.
✓	Verified		
	Inventory	The following principal reductions were made during the following periods:	2. Need proof of service of the Notice of Hearing along with a copy of the Petition on: a. Gary L. Winter (attorney for Arlene Hawkins) - Pursuant to the Requests for Special Notice.
	PTC		
	Not.Cred.	a. Purchase date to prior to marriage - \$3,251.78 b. Date of Marriage to date of death - \$15,809.10 c. After date of death - \$9,938.05	3. Order apportions the expenses of administration and debts of decedent 94.39 % to Jun Hawkins and 5.61% to Larry Hawkins. The expenses of administration come from the estate not the beneficiaries and if they do come from the beneficiaries it is only to the extent of the value of the property they receive. In addition, they have to agree to take the property subject to paying the expenses. Otherwise the property is sold and the costs of administration are paid from the proceeds of the sale.
✓	Notice of Hrg		
✓	Aff.Mail		
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
	Letters		
	Duties/Supp		
✓	Objections		
	Video Receipt		
	CI Report		
	9202		
✓	Order	Decedent left personal property consisting of the household furniture and furnishings that was acquired during the marriage as a result of the petitioner and decedent's joint efforts. Petitioner and decedent were married on 11/18/2008. The Will admitted to probate dated 3/16/2006 devised the real property to beneficiaries other than petitioner. [Arlene Hawkins (decedent's former spouse) with the residue to Larry Hawkins, decedent's son.]	
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

Please see additional page

Please see additional page

Reviewed by: KT

Reviewed on: 10/31/13

Updates:

Recommendation:

File 5B – Hawkins

As an omitted spouse, petitioner is entitled to a share of the estate under Probate Code §21610.

Petitioner states that in determining the respective separate or community property interests of the parties entitled to distribution by reason of the principal reductions against the encumbrances secured by the real property the equity gained before the marriage of \$3,251.78 would be equally shared by Petitioner and decedent's son. The reductions made during the term of the marriage of \$15,809.10 would appropriately be allocated to petitioner and the post-death principal reductions would also be appropriately allocated to petitioner to provide for a 94.39% interest in the real property to be distributed to petitioner and a 5.61% interest to the decedent's son.

Petitioner prays that the Court determine the persons who are entitled to distribution of decedent's estate, and specifically determine as follows:

1. That the above described personal property is the community property of Petitioner and decedent, the one half of it belongs to petitioner and that Petitioner is entitled the decedent's ½ community interest.
2. The separate property interest, if any of the decedent; the community property interest of Petitioner and decedent and/or separate property interest of Petitioner in the above-described real property.

Objections of Arlene Hawkins to Petition to Determine Persons Entitled to Distribution of the Estate filed by Arlene Jones Hawkins on 9/27/13. Objector alleges that she is the sole beneficiary of the specific gift of decedent's principal residence. Objector states the property was the sole property of the decedent, it was purchased by the decedent prior to his marriage to Jun and was solely vested in the decedent's name. For the purpose of determining the character of the real property there is a rebuttable presumption that the character of the property is as set forth on the deed. This presumption may be rebuttable only by clear and convincing evidencing proof. The petition provides no evidence to rebut and does not even allege that the property was in some way transmuted to community property.

Petitioner contends that Jun's statutory share is one half of decedent's community property and one half of decedent's separate property. Therefore Arlene is entitled to one half of the residence. Decedent's residence was Decedent's separate property prior to and during the marriage to Jun. Decedent's earnings were presumed community and the petition provides evidence of principal reduction as a result of the community earnings during the marriage in the amount of \$15,809.10. Any such principal reduction may be characterized as pro tanto interest of the community.

Under Probate Code §26210, Jun is only entitled to one-half of the Decedent's community property. Decedent specifically devised the residence to Arlene and Arlene contends that as with the separate portion of the residence, she is entitled to one-half of the community property in the residence.

Objector contends that she should be awarded any costs under Probate Code §1002 and in equity should be reimbursed her fees because requiring her to incur fees would be contrary to Decedent's intent.

Objector prays for an Order:

1. Decedent's real property, located at 2075 E. Eclipse in Fresno is the Decedent's principal residence described in the Decedent's Will;
 2. The residence is the separate property of the Decedent;
 3. Principal reduction of the residence during the marriage is community property;
 4. Arlene Jones Hawkins is the sole named beneficiary of Decedent's residence under the terms of the Will;
 5. Jun Hawkins' statutory share as omitted spouse is one-half of Decedent's community property and one-half of Decedent's separate property;
 6. As the sole beneficiary and devisee of Decedent's residence, and subject to Jun Hawkins' one-half statutory share, Arlene Jones Hawkins is entitled to and should be distributed one-half of Decedent's residence under the terms of Decedent's Will;
 7. Arlene Jones Hawkins is a prevailing party under this proceeding and entitled to an award of costs under Probate Code §1005.
 8. Arlene Jones Hawkins is, in equity, entitled to be reimbursed her attorney fees.
-

NEEDS/PROBLEMS/COMMENTS (cont.):

4. The real property is the separate property of the decedent because it was acquired prior to the marriage. Petitioner states she has a community interest in the real property because during the 3 year marriage the mortgage was paid with community property funds. This is correct. She does have a community interest in the property. However, there is not enough information in the pleadings to determine the community property interest. Petitioner will need to provide the court with amount of the down payment on the property, the full amount of the loan on the property and the community payments made on the loan that reduced the principal balance of the loan.

Petitioner states the encumbrances on the property total \$275,439.07 with an outstanding balance of \$13,138.49 and the appraised value of the property is \$230,000.00. She states \$15,809.10 was paid using community funds to reduce the mortgage on the property. Family Code § 2622 (b) states to the extent that community debts exceed total community and quasi-community assets, the excess of debt shall be assigned as the court deems just and equitable, taking into account factors such as the parties' relative ability to pay.

Pursuant to Probate Code §21610 petitioner is entitled to an intestate share of the estate as an omitted spouse. Therefore, once the community interest is determined, she would be entitled to the community interest in the property, if any, and a ½ interest in the separate property. With regards to the mortgage payments paid after the date of death, they may be considered costs of administration and reimbursable to her. However, since Petitioner has been living in the home the amounts paid could also be considered rents for the occupancy of the property.

Note: It appears that pursuant to Prob. Code, § 6122 the specific gift to former spouse/objector Arlene Jones Hawkins is void. Probate Code §6122 (a) states unless the will expressly provides otherwise, if after executing a will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes all of the following: (1) Any disposition or appointment of property made by the will to the former spouse.

6 Guy Ballesteroz (Estate)

Case No. 13CEPR00178

Atty Bagdasarian, Gary G. (for Bernice Ballesteroz – Administrator – Petitioner)

(1) Waiver of Accounting and Report of Administrator and Petition for Its Settlement; (2) Waiver of Administrator's Commissions; (3) for Allowance of Attorney's Fees for Ordinary Services, and (4) for Final Distribution [Prob. C. 10810, 10811, 10954 & 11640]

DOD: 11-14-12		BERNICE BALLESTEROZ , Spouse and Administrator with Full IAEA without bond, is Petitioner. Accounting is waived. I&A: \$281,849.95 POH: \$287,451.44 (cash) Administrator (Statutory): Waived Attorney (Statutory): \$8,749.00 Distribution pursuant to intestate succession and Assignment of Interest filed 3-13-13: Bernice Ballesteroz: \$278,702.44 Status Report filed 11-1-13 by Attorney Bagdasarian requests continuance of 120 days due to the time anticipated for communications with the IRS and the upcoming holiday period.	NEEDS/PROBLEMS/COMMENTS: <u>Continued from 9-3-13</u> Note: IRS filed a Creditor's Claim for \$65,018.74 and a Request for Special Notice on 8-29-13. The Creditor's Claim indicates tax liens for the decedent for various amounts, plus interest, going back to 2001. <u>Minute Order 9-3-13:</u> Counsel requests a continuance. Continued to 11-5-13. Note: A Petition for Preliminary Distribution filed 9-16-13 was granted on 10-30-13 that authorized a preliminary distribution to Petitioner in the amount of \$100,000.00; therefore, a revised Order will be necessary, as well as a receipt for the preliminary distribution amount prior to the next hearing.	
Cont. from 090313				
<input type="checkbox"/>	Aff.Sub.Wit.			
✓	Verified			
✓	Inventory			
✓	PTC			
✓	Not.Cred.			
✓	Notice of Hrg			
✓	Aff.Mail			
	Aff.Pub.			
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
✓	Letters			4-11-13
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
✓	9202			
✓	Order			
	Aff. Posting			
	Status Rpt			
	UCCJEA			
	Citation			
✓	FTB Notice			
		Reviewed by: skc Reviewed on: 11-1-13 Updates: Recommendation: File 6 – Ballesteroz		

Amended Petition for Probate of Will and for Letters Testamentary

DOD: 3-2-13	DIANE ESPARZA , Daughter and Named Alternate Executor without bond, is Petitioner.	NEEDS/PROBLEMS/COMMENTS: <u>Continued from 8-21-13, 9-11-13, 10-9-13</u> Minute Order 8-21-13: The Court appoints Diane Esparza as special administrator with limited powers for the limited purpose of obtaining information regarding the accounts. Letters of special administrator to expire 9-11-13. Continued to 9-11-13. Minute Order 9-11-13: The Court appoints Ray Esparza as co-special administrator. The Court indicates to the parties that both special administrators are appointed for the limited purpose of determining the assets. Letters of special administration to expire on 10/9/13. Counsel is directed to prepare the order. Continued to 10/9/13 Note: Letters of Special Administration issued 10-2-13. Minute Order 10-9-13: Mr. Roberts advises the Court that Ray Esparza was appointed as co-administrator. Mr. Roberts requests a continuance. Matter continued to 11/5/13. Letters of Special Administration are extended to 11/5/13. Continued to 11/5/13 @ 9:00 a.m. Dept. 303 Note: The decedent's will dated 2-12-98 devises the entire estate to the Ray P. and Virgie Esparza Trust dated 11-1-96. Petitioner Diane Esparza is the named alternate executor of the will and is also the successor trustee of the trust. <u>The following issues remain for both Petitioner and Objector:</u> SEE ADDITIONAL PAGES Reviewed by: skc Reviewed on: 11-1-13 Updates: Recommendation: File 7 – Esparza
	Full IAEA – ok	
	Will dated 2-12-98	
Cont From 082113, 091113, 100913	Residence: Fresno	
Aff.Sub.Wit.	Publication: Fresno Business Journal	
✓ Verified	Estimated Value of Estate:	
Inventory	Annual income: \$80,000.00	
PTC	Real property: \$80,000.00	
Not.Cred.	Total: \$80,000.00	
✓ Notice of Hrg	Probate Referee: Steven Diebert	
✓ Aff.Mail w	Objection filed 6-18-13 by Ray A. Esparza , son, states he believes there is a more recent will. Objector had filed a petition for probate in 13CEPR00289, but dismissed his petition when a will was discovered. Petitioner has not allowed him to look through the decedent's papers. Petitioner obtained a dumpster and threw away a dumpster full of the decedent's papers and belongings. Objector is trying to find out who prepared the decedent's will and trust to determine if there is a more recent will.	
✓ Aff.Pub.	Objector does not believe Petitioner should be the executor, as she has been dishonest with him and has taken assets of the estate. Objector states Petitioner withdrew \$21,000.00 from the decedent's EECU account and deposited a check for \$9,950.00 received from AAA and a \$6,066.45 check into her account. These monies should be part of the estate. See attached copies. Objector believes there are other assets that Petitioner has taken. She is hiding documents and has destroyed or disposed of a dumpster full of documents. Objector is informed and believes that Petitioner has used the decedent's credit cards and gas cards. Objector objects to Petitioner's appointment as executor and requests that the Public Guardian be appointed.	
Sp.Ntc.	Petitioner filed a declaration in response: Petitioner states she did deposit some of her mother's money into her accounts, but only as a temporary measure for safekeeping. At the instruction of her attorney, Petitioner has deposited the funds noted above into his law firm's client trust account until she is appointed as Executor and can open an estate account. Petitioner was informed that her brother (Objector) removed \$1,742.81, \$250, and \$125 from three accounts. Petitioner was concerned he would remove other funds, so she protected them.	
Pers.Serv.		
Conf. Screen		
✓ Letters		
✓ Duties/Supp		
✓ Objections		
Video Receipt		
CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		

Page 2

As of 11-1-13, nothing further has been filed. The following issues remain:

Petitioner:

1. The witnesses of the will did not date their signatures. The Court may require proof of subscribing witness pursuant to Probate Code §8220.
2. The Court may require clarification regarding the estimated value of the estate.
3. Letters are not signed.

Objector:

1. Objector requests appointment of the Public Administrator; however, there is no proof of service of objection or notice of hearing served on the Public Administrator or County Counsel.

Note: If the petition is granted status hearings will be set as follows:

- **Friday, 12/20/2013 at 9:00a.m. in Dept. 303** for the filing of the bond
- **Friday, 01/17/2014 at 9:00a.m. in Dept. 303** for the filing of the inventory and appraisal **and**
- **Friday, 10/17/2014 at 9:00a.m. in Dept. 303** for the filing of the first account and final distribution.

Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior to the hearings on the matter the status hearing will come off calendar and no appearance will be required.

Dept. 303, 9:00 a.m. Tuesday, November 5, 2013

Atty McCloskey, Daniel T. (for Gregory L. Taylor – Petitioner – Son)
 Atty Anderson, Bonnie J. (for Diane Elizabeth Taylor – Objector)

**Second Amended Petition for Letters of Administration; Authorization to Administer
 Under IAEA (Prob. C. 8002, 10450)**

DOD: 02/16/2009		GREGORY L. TAYLOR , son is petitioner and requests appointment as Administrator with will annexed with bond set at \$205,000.00.	NEEDS/PROBLEMS/COMMENTS: 1. Petition indicates that there is an issue of a predeceased child. #8 of the petition lists two deceased children however the names and addresses of their issue, if any, is not provided.										
		Named Executor declines to act.	<p>Note: If the petition is granted status hearings will be set as follows:</p> <p>• Friday, 12/13/2013 at 9:00a.m. in Dept. 303 for the filing of the Bond <u>and</u></p> <p>Friday, 04/11/2014 at 9:00a.m. in Dept. 303 for the filing of the inventory and appraisal <u>and</u></p> <p>• Friday, 01/09/2015 at 9:00a.m. in Dept. 303 for the filing of the first account and final distribution.</p> <p>Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior to the hearings on the matter the status hearing will come off calendar and no appearance will be required.</p>										
Cont. from		Full IAEA – o.k.											
<input type="checkbox"/>	Aff.Sub.Wit.		<table border="1"> <tr> <td colspan="2">Reviewed by: LV</td> </tr> <tr> <td colspan="2">Reviewed on: 11/01/2013</td> </tr> <tr> <td colspan="2">Updates:</td> </tr> <tr> <td colspan="2">Recommendation:</td> </tr> <tr> <td colspan="2">File 8B – Taylor</td> </tr> </table>	Reviewed by: LV		Reviewed on: 11/01/2013		Updates:		Recommendation:		File 8B – Taylor	
Reviewed by: LV													
Reviewed on: 11/01/2013													
Updates:													
Recommendation:													
File 8B – Taylor													
✓	Verified												
<input type="checkbox"/>	Inventory	Will dated: 08/02/1989											
<input type="checkbox"/>	PTC	Codicil: 11/07/2006											
<input type="checkbox"/>	Not.Cred.												
✓	Notice of Hrg	w/ Residence: Clovis Publication: The Business Journal											
✓	Aff.Mail												
✓	Aff.Pub.												
<input type="checkbox"/>	Sp.Ntc.												
<input type="checkbox"/>	Pers.Serv.												
<input type="checkbox"/>	Conf. Screen												
✓	Letters												
✓	Duties/Supp												
<input type="checkbox"/>	Objections												
<input type="checkbox"/>	Video Receipt												
<input type="checkbox"/>	CI Report												
<input type="checkbox"/>	9202												
✓	Order												
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<input type="checkbox"/>	UCCJEA												
<input type="checkbox"/>	Citation												
<input type="checkbox"/>	FTB Notice												

Status Hearing

DOD: 02/16/2009	GREGORY L. TAYLOR , son is petitioner.	NEEDS/PROBLEMS/COMMENTS:
Cont. from		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
	<p>Status Report Pursuant to Local Rule 7.5 filed 10/30/2013 by Attorney Daniel T. McCloskey states on 05/31/2013, Petitioner filed a Petition for Probate of Will and for Letters Testamentary to administer the above-referenced estate. An Amended Petition was filed on 08/05/2013, to correct the Petition to request Letters of Administration. A Second Amended Petition for Letters of Administration was filed on 09/25/2013 to add the codicil dated 11/07/2006 to the administration of the above-referenced estate. Letters have not been issued.</p> <p>Petitioner is ready to proceed with his amended Petition if granted.</p> <p>Objector's Status Report filed 10/24/2013 by Diane Elizabeth Taylor, Objector, states Decedent died in Fresno County on February 16, 2009, leaving an estate comprised of real property located in Clovis, Fresno County, California, the value of which is believed to be in excess of \$200,000.00, and personal property consisting of cash, retirement accounts and bank accounts believed to be in excess of \$250,000.00, household furnishings, appliances, and other such personal property, the value of which is believed to be in excess of \$25,000.00.</p> <p>At the time of Decedent's passing, his estate was to be distributed pursuant to the terms of a validly executed codicil dated 11/07/2006, entitled Amendment to the Will of George Taylor and Carol J. Taylor ("Codicil" or "2006 Codicil"), a true and correct copy of which is attached hereto as Exhibit "A", and incorporated by this reference.</p> <p>At the time of Decedent's passing, Petitioner took possession of all personal property and real property of the Decedent but never provided an accounting or inventory of the personal property and real property of the Decedent.</p> <p>Please see additional page</p>	
		Reviewed by: LV
		Reviewed on: 11/01/2013
		Updates:
		Recommendation:
		File 8C – Taylor

At various times after Decedent's passing, and continuing into 2013, Petitioner secretly distributed the personal property of Decedent to himself, to Defendant Ashlee Sophia Taylor, and to other individuals whose identities are as yet unknown but Objector believes will be obtained during discovery.

Pursuant to the terms of the 2006 codicil, Objector was to receive a monetary inheritance in the amount of \$20,000.00; an inheritance Petitioner repeatedly promised, orally and in writing, Objector would receive. Petitioner thereafter failed and refused to disburse the inheritance due Objector and has instead retained the bulk of Decedent's estate for Petitioner's own use and benefit, to the detriment of Objector.

On May 31, 2013, Petitioner filed his Initial Petition in an apparent effort to prevent Objector from pursuing legal action to collect the amount due her; the amount Petitioner verbally and in writing promised he would pay to Objector.

On July 9, 2013, and as permitted by law, Objector appeared through counsel to object to the defective and fraudulently filed initial petition. At the hearing, the court continued the hearing to provide time for Objector to file a written objection and for Petitioner to file an amended Petition that would include all wills and codicils or amendments.

On or about July 31, 2013, Petitioner filed an Amended Objection which was again based on the 1989 superseded will and contained the same defects, fraudulent information and material omissions as the Initial Petition.

On August 15, 2013, Objector filed her written Objection addressing the defective nature of the fraudulently filed Initial Petition and Amended Petition, and caused her Summons and Objection to be served on all personal identified therein.

On or about September 11, 2013, Petitioner/Respondent served an unverified and legally defective general denial in response to the Objection. In lieu of Objector filing a demurrer and motion to strike the fatally defective response, on or about September 24, 2013, Petitioner/Respondent filed an amended and verified response to the Objection.

On or about September 24, 2013, Petitioner filed and served another verified amended Petition (the "Second Amended Petition") seeking to probate the 1989 will and the 2006 Codicil, thereby conceding to the validity and enforceability of the 2006 Codicil and Objector's inheritance rights as claimed in the Objection. It is noted the second Amended Petition was filed by Petitioner without first obtaining court permission in the manner required by statute and/or stipulation from Objector, and in violation of the law. Petitioner's Notice of Hearing on the Second Amended Petition is attached hereto as Exhibit "B", and incorporated by this reference.

As of the date this status report was executed, Respondent/Defendant's, Torin Quinn Taylor, a minor; Logan Gregory Taylor, a minor; Ashlee Sophia Taylor; William Theodore (Taylor) Spicer and Lillian F. Cox, have failed to file any response to the Objection and are, as a matter of law, in default and their defaults must be entered pursuant to Objector's September 26, 2013 request.

Please see additional page

Dept. 303, 9:00 a.m. Tuesday, November 5, 2013

After the defaults of the Respondents/Defendants identified in paragraph 12, above have been entered and the legal issues raised by the filing of the Second Amended petition without court permission or a stipulation have been addressed, Objector is prepared to proceed with discovery and depositions absent a resolution of the issues raised by the Objection.

Objector is amenable to a referral to early neutral case evaluation or mediation.

Objector, Diane Elizabeth Taylor, therefore requests that:

1. The Court on its own motion enter the defaults of Respondent/Defendants , Torin Quinn Taylor, a minor ; Logan Gregory Taylor, a minor; Ashlee Sophia Taylor; William Theodore (Taylor) Spicer and Lillian F. Cox timely and properly submitted September 26, 2013.
2. Enter Judgment in favor of Objector and against Petitioner/Respondent/Defendant Gregory L. Taylor, in the principal amount of \$20,000.00, plus prejudgment interest from and after February 16, 2009, (Decedent's date of death) through date of entry of judgment, plus post judgment interest from and after entry of judgment, plus attorney's fees and costs incurred by Objector to date, subject to a memorandum of costs;
3. Such other and further orders be made as this court may deem proper under the circumstances and in accordance with the law.

Marie DOD: 09/25/09		WILLIAM M. SHIBA, successor trustee, is petitioner.	NEEDS/PROBLEMS/COMMENTS:
William DOD: 07/04/12			
		<p>Petitioner states:</p> <ol style="list-style-type: none">1. Petitioner is the son of WILLIAM (BILL) SHIBA and MARIE HARUKO ("Settlers") and named as Successor Trustee of the SHIBA FAMILY TRUST (the "Trust") created by Settlers on 05/01/06. The Trust is now irrevocable. Petitioner is a beneficiary of the Trust.2. The Settlers held discussions with family members regarding their desire to create and fund a Trust. One family member, an attorney, volunteered to draft a trust and complete the necessary paperwork. Unfortunately, he was not familiar with trusts and a number of blunders were made during the crafting of the trust. While the trust instrument and the effort to effectuate this wish was "botched" it was abundantly clear to family members, including Petitioner, that it was the Settlor's wish and intent to create and fund their trust.3. Petitioner contends that it was the Settlor's intent to transfer their personal residence into the Trust. The evidence of their intent is the fully executed quitclaim deed dated 05/01/06 and recorded 03/23/10 which expressed their intention to transfer the residence into the Trust.4. Petitioner contends that the author of the quitclaim deed erred when he drafted said deed and failed to name the vesting party as the trustees in that document. The author described the vesting party as the SHIBA FAMILY TRUST rather than WILLIAM (BILL) SHIBA and MARIE HARUKO SHIBA, as trustees of the SHIBA FAMILY TRUST. As a consequence of this vesting error the deed was ineffective to convey the property to the Trust.5. Petitioner requests the Court to deem the real property included in the decedent's trust and enter an order effecting that conveyance. <p>Petitioner prays for an Order that:</p> <ol style="list-style-type: none">1. The residential real property be ordered vested in the name of the Petitioner, William M. Shiba, successor trustee of the Shiba Family Trust dated 05/01/06.	
Cont. from			
	Aff.Sub.Wit.		
✓	Verified		
	Inventory		
	PTC		
	Not.Cred.		
✓	Notice of Hrg		
✓	Aff.Mail		w/
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
	Letters		
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
	9202		
✓	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

Atty De Goede, Dale A. (for Anne Gendusa – Spouse/Petitioner)

Petition for Probate of Will and for Letters Testamentary; Authorization to Administer Under IAEA (Prob. C. 8002, 10450)

DOD: 08/31/13		ANNE GENDUSA , surviving spouse/named alternate Executor without bond, is Petitioner. Full IAEA – OK Will dated 01/12/87 Residence: Fresno Publication: The Business Journal <u>Estimated Value of the Estate:</u> Personal property - \$109,000.00 Annual income - 58,100.00 Real property - 620,000.00 Total - \$787,100.00 Probate Referee: RICK SMITH	NEEDS/PROBLEMS/COMMENTS:
Cont. from			
Aff.Sub.Wit.	s/p		
✓ Verified			
Inventory			
PTC			
Not.Cred.			
✓ Notice of Hrg			
✓ Aff.Mail	w/		
✓ Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
✓ Letters			
✓ Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
✓ Order			
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			
Reviewed by: JF			
Reviewed on: 10/31/13			
Updates:			
Recommendation: SUBMITTED			
File 10 – Gendusa			

DOD: 01/01/04		JANICE D. SANDERS , daughter, is Petitioner and requests appointment as Administrator without bond. Full IAEA – OK All heirs waive bond Decedent died intestate Residence: Clovis Publication: The Business Journal <u>Estimated Value of the Estate:</u> Personal property - \$500,000.00 Annual income - <u>20,000.00</u> Total - \$520,000.00 Probate Referee: STEVEN DIEBERT	NEEDS/PROBLEMS/COMMENTS:	
Cont. from				
	Aff.Sub.Wit.			
✓	Verified			
	Inventory			
	PTC			
	Not.Cred.			
✓	Notice of Hrg			
✓	Aff.Mail			w/
✓	Aff.Pub.			
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
✓	Letters			
✓	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✓	Order			
	Aff. Posting			
	Status Rpt			
	UCCJEA			
	Citation			
	FTB Notice			

Reviewed by: JF
Reviewed on: 10/31/13
Updates:
Recommendation: SUBMITTED
File 11 – Kjer

Atty Teixeira, Stanley, sole practitioner (for Victoria L. Reyes and Stephanie E. Callahan)
 Atty Sharbaugh, Catherine (Court-appointed for Conservatee)

Status Hearing Re: Filing of the First Account

Age: 77 years		<p>VICTORIA L. REYES and STEPHANIE E. CALLAHAN, daughters, were appointed Co-Conservators of the Estate on 8/22/2012.</p> <p>Letters of Conservatorship issued 8/23/2012 impose the following conditions: Co-Conservators, Victoria L. Reyes and Stephanie E. Callahan, are both required to be signers on all bank accounts for Barbara Jean Quintana. The Co-Conservators may independently sign checks and other negotiable instruments. However, they both must concur in every such exercise of power per Probate Code § 2105(c)(1).</p> <p>Minute Order dated 8/22/2012 from the hearing on the appointment of conservator of the estate set this Status Hearing for the filing of the first account.</p> <p>Final Inventory and Appraisal filed 12/3/2012 shows an estate value of \$7,617.91 consisting of cash and household furnishings/furniture.</p> <p>Court Investigator Jennifer Daniel's Annual Review was filed 3/5/2013.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>OFF CALENDAR</u> First Account filed 10/31/13 is set for hearing on 12/17/13.</p>	
Cont. from 102413				
Aff.Sub.Wit.				
Verified				
Inventory				
Status Rep	X			
Not.Cred.				
Notice of Hrg				
Aff.Mail				
Aff.Pub.				
Sp.Ntc.				
Pers.Serv.				
Conf. Screen				
Letters				
Duties/Supp				
Objections				
Video Receipt				
CI Report				
9202				
Order				
Aff. Posting				
Status Rpt				
UCCJEA				
Citation				
FTB Notice				
				Reviewed by: LEG Reviewed on: 10/29/13 Updates: 11/4/13 (skc) Recommendation: File 12 – Quintana

DOD: 10/22/10		<p>LEANNE WALKER GRANT, niece, was appointed Administrator with bond fixed at \$7,000,000.00 on 03/12/12. Letters of Administration were issued on 05/16/12.</p> <p>First Report of Personal Representative and Petition for its Settlement; Petition to Determine Entitlement to Estate Distribution and to Allow Administration of Estate to Continue filed 06/13/13 and approved on 07/15/13.</p> <p>Minute Order from 07/15/13 set this matter status regarding preliminary distribution on 11/05/13.</p> <p>Inventory & Appraisal, partial No. 1 filed 09/20/13 - \$202,328.21</p> <p>Inventory & Appraisal, partial No. 2/Final filed 09/20/13 - \$6,763,876.49</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need Status Update report.</p>
Cont. from			
Aff.Sub.Wit.			
Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg			
Aff.Mail			
Aff.Pub.			
Sp.Ntc.			
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Conf. Screen			
Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			
		<p>Reviewed by: JF</p> <p>Reviewed on: 10/31/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 13 – Lowery</p>	

Status Hearing

Bernice C. Kasabian DOD: 1-17-13		JENNIFER KAPUR , Granddaughter and beneficiary, filed a Petition to Determine Existence of Trust on 6-12-13.	NEEDS/PROBLEMS/COMMENTS: Minute Order 9-10-13: Mr. Roberts indicates that he will send out the notices to the beneficiaries and complete the administration. Minute Order 10-8-13: Mr. Roberts is appearing via CourtCall. Mr. Teixeira informs the Court that one of the amendments was not signed. Continued to 11-5-13. 1. As of 11-1-13, nothing further has been filed per Court order. Need status: Has the trustee a true and correct copy of the trust and the operative amendments been provided pursuant to the Court's order of 7-30-13?
Cont from 091013, 100813			
<input type="checkbox"/>	Aff.Sub.Wit.	Order Determining Existence of Trust filed 7-30-13 orders that Dana T. Kahler provide a true and correct copy of the trust, including the operative amendments. <i>Note: Proposed language ordering Dana T. Kahler to account was stricken from the order.</i> Minute Order 7-30-13: Mr. Roberts requests a continuance to speak with Dana Kahler. The Court grants the petition and denies the request for an accounting finding that it is premature at this time. Matter is set for Status Hearing on 9/10/13. The Court orders Dana Kahler to be personally present at the next hearing. Dana Kahler is ordered to provide evidence of any notices the he has given and/or other actions he has taken as trustee. In addition, Dana Kahler is ordered to file all documents with this court and provide copies to Mr. Teixeira and Mr. Roberts. Set on 9/10/13 at 9:00am in Dept. 303 for Status Hearing. Petition is granted before Court Trial. Order signed. A copy of the minute order was mailed to Attorneys Teixeira and Roberts and to Dana Kahler on 8-5-13.	
<input type="checkbox"/>	Verified		
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
<input type="checkbox"/>	Not.Cred.		
<input type="checkbox"/>	Notice of Hrg		
<input type="checkbox"/>	Aff.Mail		
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen		
<input type="checkbox"/>	Letters		
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		

Age: 8 months		TEMP EXPIRES 11-5-13	NEEDS/PROBLEMS/COMMENTS: Note: Petitioner resides in Visalia, which is in Tulare County. Continued from 7-30-13, 9-17-13 Minute Order 7-30-13: Ms. Riley informs the Court that mother is in custody. Ms. Riley is advised that mother will need to be served for the next hearing. The Court extends the temporary to 9/17/13 and orders that there be no visitation with Priscilla Murillo, Renato Marroquin, or either parent. Continued to 9/17/13 at 9:00am in Dept. 303. Temporary Guardianship/Conservatorship Letters extended to 9/17/13. Minute order 9-17-13: Ms. Riley informs the Court that the father passed away last month. Ms. McCrary requests a continuance for the purpose of allowing the mother who will be released from custody on 9/27/13 an opportunity to be present. Visitation between the child and Ms. McCrary to be determined among the parties. Ms. McCrary provides contact information. Matter continued to 11/5/13. The temporary is extended to 11/5/13. Continued to: 11/5/13 at 09:00a.m. in Dept 303. Temporary Guardianship Letters extended to: 11/5/13 1. If diligence is not found, need service on maternal grandmother and paternal grandfather pursuant to Probate Code §1511.
		HELEN RILEY , Paternal Aunt, is Petitioner. Father: EDWARD (AKA JESSE) VENEGAS - Nominates, consents, and waives notice - Deceased per minute order 9-17-13. Mother: CECILIA MARROQUIN - Personally served 8-15-13 Paternal Grandfather: Joe Venegas - Declaration of Due Diligence filed 8-19-13 Paternal Grandmother: Mary Helen Venegas (Deceased) Maternal Grandfather: Renato Marroquin - Served by mail 6-14-13 Maternal Grandmother: Sandra Garcia - Declaration of Due Diligence filed 8-19-13 Petitioner states the mother is not fit to have the minor in her care. She has been hiding from the authorities because of a warrant due to her criminal activity involvement. The father is working as a truck driver and has little time for his child. Court Investigator Charlotte Bien filed a report on 7-15-13.	
Cont. from: 073013, 091713			
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified		
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
<input type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg		
<input checked="" type="checkbox"/>	Aff.Mail	W	
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input checked="" type="checkbox"/>	Pers.Serv.	W	
<input checked="" type="checkbox"/>	Conf. Screen		
<input checked="" type="checkbox"/>	Letters		
<input checked="" type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input checked="" type="checkbox"/>	CI Report		
<input checked="" type="checkbox"/>	Clearances		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input checked="" type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
			Reviewed by: skc
			Reviewed on: 11-1-13
			Updates:
			Recommendation:
			File 15 – Marroquin

16 Travis Gardeley & Harmonee Gardner (GUARD/P) Case No. 13CEPR00780
Atty Frierson, Emma (pro per – maternal great-aunt/Petitioner)
Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Travis, 9		<u>TEMPORARY EXPIRES 11/05/13</u>	NEEDS/PROBLEMS/COMMENTS:
Harmonee, 2			
		EMMA FRIERSON , maternal great-aunt, is Petitioner.	This Petition is for Travis Gardeley only. Hearing on Stacy Edwards, maternal aunt's, Petition for guardianship of Harmonee Gardner is scheduled for 11/20/13.
Cont. from		Father: ROCHELLE LONEL GARDELEY – <i>Court dispensed with notice on</i> <i>09/18/13</i>	1. Need Notice of Hearing.
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified	Mother: TANYANNA GARDNER – <i>Consent & Waiver of Notice filed</i> <i>09/04/13</i>	2. Need proof of service by mail at least 15 days before the hearing of Notice of Hearing with a copy of the Petition for Appointment of Guardian of the Person <u>or</u> Consent & Waiver of Notice <u>or</u> Declaration of Due Diligence for:
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC	Paternal grandparents: UNKNOWN	- Paternal grandparents (unknown) - Maternal grandparents (not listed)
<input type="checkbox"/>	Not.Cred.		
<input type="checkbox"/>	Notice of Hrg	x	Maternal grandparents: NOT LISTED
<input type="checkbox"/>	Aff.Mail	x	
<input type="checkbox"/>	Aff.Pub.		Petitioner states that the mother asked Petitioner to care for Travis because she does not have a steady place to live. Travis states that he wants to live with Petitioner.
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.	x	Court Investigator Dina Calvillo filed a report on 10/24/13.
<input checked="" type="checkbox"/>	Conf. Screen		
<input checked="" type="checkbox"/>	Letters		
<input checked="" type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input checked="" type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input checked="" type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
			Reviewed by: JF
			Reviewed on: 11/01/13
			Updates:
			Recommendation:
			File 16 – Gardeley & Gardner

Atty Gonzalez, Eric (pro per – brother/Petitioner)

Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Katrina, 12	<u>NO TEMPORARY REQUESTED</u>		NEEDS/PROBLEMS/COMMENTS:
Karina, 8	ERIC GONZALEZ, brother, is Petitioner.		
Ernesto, 5	Father: ERNESTO GONZALEZ Mother: ELIZABETH GONZALEZ		3. Need Notice of Hearing.
	Paternal grandfather: ERNESTO GONZALEZ		4. Need proof of service at least 15 days before the hearing of Notice of Hearing with a copy of the Petition for Appointment of Guardian of the Person <u>or</u> Consent & Waiver of Notice <u>or</u> Declaration of Due Diligence for:
Cont. from	Paternal grandmother: CARMEN RIVERA		- Ernesto Gonzalez (father) – Personal service required
<input type="checkbox"/> Aff.Sub.Wit.	Maternal grandparents: NOT LISTED		- Elizabeth Gonzalez (mother) – Personal Service required
<input checked="" type="checkbox"/> Verified	Siblings: EDDIE GONZALEZ, ERNIE CARRILLO, RICHARD GONZALEZ, CESAR MEJIA, JESSIE GONZALEZ, AMBER GONZALEZ, ASHLEY GONZALEZ		- Ernesto Gonzalez (paternal grandfather)- service by mail sufficient
<input type="checkbox"/> Inventory	Petitioner states that the parents are not able to provide a home or support for the minors. The parents are basically homeless. Petitioner states that he is their brother and can provide a stable home for the minors. Court Investigator Samantha Henson filed a report on 10/30/13.		- Carmen Rivera (paternal grandmother) – service by mail sufficient
<input type="checkbox"/> PTC			- Maternal grandparents (not listed) – service by mail sufficient
<input type="checkbox"/> Not.Cred.			- Katrina Gonzalez (minor) – personal service required
<input type="checkbox"/> Notice of Hrg			- All siblings 12 years of age and older – service by mail sufficient
<input type="checkbox"/> Aff.Mail			
<input type="checkbox"/> Aff.Pub.			
<input type="checkbox"/> Sp.Ntc.			
<input type="checkbox"/> Pers.Serv.			
<input checked="" type="checkbox"/> Conf. Screen			
<input checked="" type="checkbox"/> Letters			
<input checked="" type="checkbox"/> Duties/Supp			
<input type="checkbox"/> Objections			
<input type="checkbox"/> Video Receipt			
<input checked="" type="checkbox"/> CI Report			
<input type="checkbox"/> 9202			
<input checked="" type="checkbox"/> Order			
<input type="checkbox"/> Aff. Posting			
<input type="checkbox"/> Status Rpt			
<input checked="" type="checkbox"/> UCCJEA			
<input type="checkbox"/> Citation			
<input type="checkbox"/> FTB Notice			
			Reviewed by: JF
			Reviewed on: 11/01/13
			Updates:
			Recommendation:
			File 17 – Gonzalez

Age: 13		<u>TEMPORARY EXPIRES 11/05/13</u>		NEEDS/PROBLEMS/COMMENTS:	
		TERRI ANN LINDER , maternal grandmother, is Petitioner.		5. Need <i>Notice of Hearing</i> .	
		Father: ALEX VILLANEDA		6. Need proof of service at least 15 days before the hearing of <i>Notice of Hearing</i> with a copy of the <i>Petition for Appointment of Guardian of the Person</i> <u>or</u> Consent & Waiver of Notice <u>or</u> Declaration of Due Diligence for:	
Cont. from		Mother: TERRI ANN LOPEZ		- Alex Villaneda (father) – Personal service required	
	Aff.Sub.Wit.			- Terri Ann Lopez (mother) – Personal Service required	
✓	Verified	Paternal grandfather: JOE VILLANEDA - deceased		- Isaiah Martinez (minor) – Personal service required	
	Inventory	Paternal grandmother: KIM VILLANEDA		- Kim Villaneda (paternal grandmother)- service by mail sufficient	
	PTC				
	Not.Cred.				
	Notice of Hrg	x	Maternal grandfather: CHARLES LINDER – deceased		
	Aff.Mail	x	Siblings: PRESTON LOPEZ (7), ETHAN LOPEZ (6), IAN LOPEZ (6), ALIVIA WOODS (10 MONTHS)		
	Aff.Pub.				
	Sp.Ntc.				
	Pers.Serv.	x	Petitioner states that the minor has been moved in and out of her home on numerous occasions by the parents due to them wanting to collect welfare for him. Petitioner states that she does not care about money, but wants to provide a stable environment for Isaiah. Petitioner states that Isaiah's grades fail when he is in the care of his parents and that the parents do not follow-up on important things relating to Isaiah's education.		
✓	Conf. Screen				
✓	Letters				
✓	Duties/Supp				
	Objections				
	Video Receipt				
✓	CI Report				
	9202				
✓	Order				
	Aff. Posting			Reviewed by: JF	
	Status Rpt			Reviewed on: 11/01/13	
✓	UCCJEA		Court Investigator Charlotte Bien filed a report on 10/25/13.	Updates:	
	Citation			Recommendation:	
	FTB Notice			File 18 – Martinez	

**Notice of Motion and Motion for Distribution of Funds Received from CalSTRS by
Guardian of the Person to be Paid to the Parent, Tony Navarro, for the Minor's
Benefit**

Age: 7		TONY NAVARRO , Father, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
		JENNIFER SANCHEZ , Maternal Aunt, was appointed Guardian of the Estate on 3-6-13 without bond, funds blocked.	Note: This matter will be heard at 8:30 am in Dept. 52 (Main Courthouse)
Cont from 090513, 101013		Petitioner states the mother died in December 2012. At the time of her death, there was litigation pending between the parents re child support. Said litigation has spanned a period of several years culminating in an order of primary custody to Petitioner at the time of the mother's death. Petitioner requests the Court take Judicial Notice of the underlying litigation in 08CEFL00595. A joinder against Ms. Sanchez has recently been issued. That matter is still pending.	Note: Although Mr. Navarro filed this petition and is therefore the "Petitioner" in the matter before this Probate Court at this time, it appears that in his documents he refers to himself as the "Respondent" and to Ms. Sanchez as "Petitioner," as is the practice in Family Law litigation. Examiner notes this observation simply to avoid confusion in reading the Examiner Notes, which refer to the <i>party bringing the petition</i> as the "Petitioner."
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified		Minute Order 9-5-13: The Court dispenses with notice as to item #2 in the examiner notes. The Court considers Mr. Navarro's filing to be a petition requiring additional fees. Mr. Porter withdraws his request for judicial notice. Matter is continued to 10/10/13. The hearings set for 9/6/13 are vacated and rescheduled for 10/10/13. Continued to 10/10/13 at 9am in Dept 303.
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		Minute Order 10-10-13: Matter continued to 11-5-13 at which time the Court will render its ruling. Continued to 11-5-13 at 8:30 am in Dept. 52.
<input type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg		Reviewed by: skc
<input checked="" type="checkbox"/>	Aff.Mail	W	
<input type="checkbox"/>	Aff.Pub.		Reviewed on: 10-31-13
<input type="checkbox"/>	Sp.Ntc.		Updates:
<input type="checkbox"/>	Pers.Serv.		Recommendation:
<input type="checkbox"/>	Conf. Screen		File 1 – Navarro
<input type="checkbox"/>	Letters		
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
		Petitioner states the CalSTRS payments for the child were ordered on an ex parte basis on 5-8-13 to be received by the Guardian of the Estate and deposited to blocked account.	
		Petitioner states the funds are for the benefit of the child and should be utilized for the care of the child. At the 3-26-13 hearing wherein Ms. Sanchez was originally appointed as Guardian of the Estate without bond, Counsel for Petitioner objected as to the ongoing monthly benefit payments, specifically CalSTRS benefits, being paid to her rather than to the father. At that time, she had not contacted CalSTRS and was not certain such benefit would be subject to the guardianship estate.	
		Now, precisely as predicted at that hearing, Petitioner is forced to bring the instant motion to obtain this monthly payment to pay for expenses for the child. Petitioner is the sole surviving parent, is a self-employed contractor and has an average monthly income less than the equivalent of full time minimum wage.	
		SEE ADDITIONAL PAGES	

Page 2

Petitioner states that while he is married and his current wife does earn sufficient income to support the household, the ongoing support and care of the minor child is NOT the legal responsibility of his spouse.

Petitioner states he is among the persons authorized by law to receive the benefits on behalf of the child. California Education Code §23855 and 23856 cited.

Petitioner states that if no guardianship of the estate had been established, he would be entitled to receive this benefit. However, the code does not designate as to who would have priority between a guardian of the estate and a parent having custody. Petitioner contends that the present situation makes absolutely no logical sense, nor would it be just or equitable to allow the guardian of the estate, who was appointed to oversee assets such as the decedent's vehicle, bank accounts, and various items of furnishing or other personal property, to have exclusive control over a monthly survivor benefit for the benefit of the child.

Petitioner states it seems quite clear that the monthly allowance from CalSTRS was intended to be an ongoing payment for the surviving children's health, well-being, and support. If such funds were intended to be accumulated into a blocked account as an investment for the child, then it would be much more logical that such sum would be awarded as a lump sum. As such, funds intended to provide for the child's ongoing needs should be paid to Petitioner.

Petitioner prays that the Court issue an order that the Guardian of the Estate pay forthwith to Petitioner fbo the minor child all sums received from the California State Teachers' Retirement System (CalSTRS) after such sums have been placed into a blocked account pursuant to this Court's order of 5-8-13.

Jennifer Sanchez, Guardian of the Estate, filed a Reply on 8-27-13. Ms. Sanchez states she is also the trustee of a living trust executed by the mother. The parents had a contentious relationship until the mother's death, and at her death, Petitioner sought to join Ms. Sanchez, as trustee of the trust, into the existing family law matter. During the family law proceeding, he sought modification of a child support order for \$241/month.

Ms. Sanchez states that immediately after the mother's death, Petitioner sought to obtain her trust assets for the minor's support through a motion for joinder. Although successful in joining her, as trustee, for a very limited purpose (to obtain reimbursement for one-half unpaid health and child care benefits from date of death), no ongoing support order was made against the mother which would now authorize a claim against the trust, nor the assets of this guardianship proceeding. On 7-30-13, Petitioner filed a Notice of Appeal of the court's order in the family law proceedings. That matter is currently pending.

The Reply states that the CA Education Code referenced was the basis for this court's order authorizing the guardian to receive the CalSTRS benefits as guardianship assets. Petitioner's moving papers fail to disclose the fact that he is receiving Social Security Survivor benefits for the support of the minor. Ms. Sanchez believes those are approx. \$300/month, which is more than the amount that he previously paid the mother in child support.

SEE ADDITIONAL PAGES

Page 3

Re a guardian's use of guardianship assets to support a child: It is the parents, not the guardian, who has a duty to provide financial support for the minor. Authority cited. Because a parent has the legal obligation to support his or her minor child, the minor's assets are to be preserved until he or she attains majority, if the minor has a parent available to provide support. As a matter of almost universal court policy, the guardian may not use guardianship assets without prior court approval, and **unless the minor's parents are deceased or unavailable, approval is given only in extraordinary circumstances.** (Probate Code §2422; Family Code §3902; CEB 10.20, 10:24).

Ms. Sanchez states Petitioner is responsible for support of his child. Petitioner seeks a turnover of all CalSTRS benefits on a monthly basis for his use, without establishing that guardianship assets should be available to him, or the legal grounds under which he is somehow entitled to these assets. He has attempted for more than four years to obtain assets of the decedent. He was successful in reducing his child support obligation to her shortly before she died. Through an appeal on the family law proceeding, an objection to the establishment of the guardianship proceeding, and now this motion to gain access to the assets, he continues the vindictive and malicious attack on the decedent. His recent actions explain exactly why the mother carefully executed her estate plan prior to her death, to place a trusted family member in charge of assets which will ultimately be transferred to the minor in adulthood.

Petitioner fails to show facts sufficient to compel Ms. Sanchez to furnish support under Probate Code §2404. Ms. Sanchez is informed and believes that Petitioner's household income exceeds \$100,000.00 and that he has an ownership interest in at least one home and one rental property. At no time has he spoken to Ms. Sanchez re specific needs for which additional funds are needed. He has not spoken to her at all.

Guardianship assets currently total approx. \$53,157.00. These funds should be preserved for the minor. Should Petitioner bring a petition under §2404 and establish need for support, maintenance, education, or special needs that cannot otherwise be met by the father, Ms. Sanchez shall readily comply with any court order regarding same. She shall also request appointment of a Guardian Ad Litem for the minor to investigate the facts alleged in such a petition.

Attached to the Reply is a copy of the 4-30-13 Findings and Order in 08CEFL00595

Ms. Sanchez requests the motion be DENIED.